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6 Attorneys for Defendant
FLAX USA, INC.

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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA, SANTA ANA DIVISION

10 GARO MADENLIAN, on behalf of
11 himself and all others similarly situated,

12 Plaintiff,

13 vs.

14 FLAX USA, INC., and DOES 1 through
15 10, inclusive,

16 Defendant.

Case No. SACV13-01748 JVS (JPRx)

Honorable James V. Selna
Courtroom 10C

DISCOVERY MATTER

Hon. Judge Jean P. Rosenbluth
Courtroom 6A, Spring Street

PROTECTIVE ORDER

Action Filed: November 5, 2013
Trial Date: August 25, 2015

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20 GOOD CAUSE APPEARING, AND BASED ON THE STIPULATION OF
21 THE PARTIES, THE FOLLOWING PROTECTIVE ORDER IS HEREBY
22 APPROVED AND ORDERED:

23 **GOOD CAUSE STATEMENT**

24 Good cause exists for entering into a Protective Order because, among other
25 things, (1) Plaintiff intends to propound discovery on Defendant that may
26 encompass confidential, proprietary and sensitive records that Plaintiff contends are
27 relevant to this action, including but not limited to, information relating to the
28 manufacturing, production, formulation, distribution, pricing, and sales of the flax

1 milk products at issue in this case, internal communications that may contain
2 confidential business discussions, strategy, and related financial information
3 (collectively and individually, “Defendant’s Records”); (2) Defendant intends to
4 propound discovery on Plaintiff that may encompass private, confidential and
5 sensitive records that Defendant contends are relevant to this action, including but
6 not limited to banking records, other financial records and health records
7 (collectively and individually, “Plaintiff’s Records”); (3) discovery in this case may
8 encompass Defendant’s business contracts with third parties that contain
9 confidentiality terms, and/or subpoenas to third parties bound by such contractual
10 confidentiality terms in business contracts; and (4) absent a protective order,
11 Plaintiff and Defendant will suffer prejudice.

12 Protection of confidential business information, plans and records is common
13 in litigation. See, e.g., Nutratech, Inc. v. Syntech (SSPF) Int’l, Inc., 242 F.R.D. 552,
14 555 (C.D. Cal. 2007) (“Fed. R. Civ. P. 26(c)(7) ... allows for protection of
15 ‘confidential commercial information’”) (citing Vesta Corset Co., Inc. v. Carmen
16 Found., Inc., 1999 U.S. Dist. LEXIS 124, 1999 WL 13257, at *3 (S.D.N.Y. 1999)
17 and Davis v. AT&T Corp., 1998 U.S. Dist. LEXIS 20417, 1998 WL 912012, at *2
18 (W.D.N.Y. 1998)). Additionally, other proprietary business information may be
19 safeguarded though a protective order. Miles v. Boeing Co., 154 F.R.D. 112, 114-
20 15 (E.D. Pa. 1994) (entering protective order where information about defendant’s
21 competitive labor pricing, if made available to the general public, would allow
22 competitors to examine defendant’s production abilities); Sprinturf, Inc. v.
23 Southwest Recreational Industries, Inc., 216 F.R.D. 320, 324 (E.D. Pa. 2003)
24 (protecting information about defendant’s market share and proprietary information
25 regarding development of defendant’s product line, the release of which competitors
26 could exploit to undermine defendant’s market position).

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1 are DESIGNATED MATERIALS.

2 3. Parties may designate as DESIGNATED MATERIAL deposition
3 testimony by identifying portions of any transcript (including exhibits) which
4 contain DESIGNATED MATERIAL and making a statement on the record or
5 designating the DESIGNATED MATERIAL portions within thirty (30) days after
6 counsel's receipt of the transcript. Pending such designation by counsel, the entire
7 deposition transcript, including exhibits, shall be deemed DESIGNATED
8 MATERIAL; if no designation is made within thirty (30) days after receipt of the
9 transcript, the transcript shall be considered not to contain any DESIGNATED
10 MATERIAL.

11 4. Non-parties who produce materials in connection with this litigation
12 shall have the right to seek all of the protections available to the Parties under the
13 terms of this Order. Discovery obtained from non-parties may be marked
14 "CONFIDENTIAL," making it DESIGNATED MATERIAL as that term is defined
15 herein, by (i) the producing non-parties or (ii) any Party if the information provided
16 by non-parties embodies, contains or reflects the Party's protected information.
17 Unless otherwise agreed in writing between counsel for the Parties, documents and
18 information so produced by a non-party shall automatically be deemed to be and
19 shall be treated as DESIGNATED MATERIAL for thirty (30) days following their
20 actual receipt by counsel for the Parties, in order to enable counsel to determine
21 whether any protected information is embodied therein.

22 5. The Party designating any information as DESIGNATED
23 MATERIALS shall, in the first instance, determine in good faith whether those
24 materials constitute DESIGNATED MATERIAL covered by this Order. The
25 receiving party may object in good faith to such designation at any time. A failure
26 of any Party to expressly challenge a designation shall not constitute a waiver of the
27 right to assert at a subsequent time that a designation is not in fact an appropriate
28 designation for any reason. Upon such objection, the concerned Parties are

1 obligated to negotiate in good faith regarding the designation by the disclosing
2 Party. In the event that the Parties are unable to resolve their dispute informally,
3 and the Party challenging the designation can and does identify how it intends to use
4 the document with the disputed designation, then the Party seeking protection may
5 make a motion before the Court for resolution in accordance with the Federal Rules
6 of Civil Procedure and Local Rule 37, including the joint stipulation provision.

7 **Use and Access to Designated Materials.**

8 6. DESIGNATED MATERIAL shall be used by the Parties solely for the
9 purpose of prosecuting or defending claims in this litigation, and not for any other
10 purpose, including, but not limited to, use in any business or commercial enterprise.

11 7. Access to and dissemination of DESIGNATED MATERIAL shall be
12 limited to the following, unless this Court rules that there may be further disclosure:

13 a. The Court;

14 b. Court personnel, mediators, special masters, discovery referees,
15 and court reporters and videographers recording testimony in this Action and
16 members of the staff of the Court whose functions necessitate access to
17 DESIGNATED MATERIALS;

18 c. the Parties and their employees;

19 d. Counsel of record, including counsel's agents and employees,
20 such as paralegals, legal translators, legal secretaries, legal clerks, shorthand
21 reporters, independent shorthand reporters and videographers retained to record and
22 transcribe testimony in connection with this Action, outside copy vendors that are
23 reasonably necessary for maintaining, defending or evaluating this Action,
24 independent data entry or data processing entities retained in connection with this
25 Action, graphics or design consultants retained for purposes of preparing
26 demonstratives or other exhibits for deposition, trial or other court proceedings, and
27 non-technical jury or trial consultants;

28 e. the authors, senders, addressees, and copy recipients of such

1 DESIGNATED MATERIAL;

2 f. experts or independent consultants engaged by counsel or the
3 Parties to assist in this litigation who are not currently employed by a Party or a
4 direct competitor of a Party and who, at the time of retention, are not anticipated to
5 become an employee of a Party or a direct competitor of a Party, provided that prior
6 to any such disclosure each such expert or consultant signs the Consent (attached as
7 Exhibit A); and

8 g. any other person as to whom the Parties first agree in writing and
9 who signs the Consent before being provided with DESIGNATED MATERIAL.

10 These restrictions may be altered or supplemented by written stipulation
11 between the Parties or upon application of any Party, only if approved by Court
12 Order.

13 8. Counsel shall retain all executed Consents, and a copy of any executed
14 Consents shall be provided to all adverse Parties upon order of the Court for good
15 cause shown.

16 9. Except as may be otherwise ordered by the Court, any person may be
17 examined as a witness at deposition and may testify concerning all DESIGNATED
18 MATERIALS that he or she wrote or received. Without in any way limiting the
19 generality of the foregoing:

20 a. A present director, officer, and/or employee of a producing Party
21 may be examined and may testify concerning all DESIGNATED MATERIALS
22 which have been produced by that Party;

23 b. Former directors, officers, agents, consultants and/or employees
24 of a producing Party may be interviewed, examined and may testify concerning all
25 DESIGNATED MATERIALS; and

26 c. Non-parties may be examined or testify concerning any
27 document containing DESIGNATED MATERIALS of a producing Party which
28 appears on its face or from other documents or testimony to have been written or

1 received by the non-party as a result of any contract or relationship with the
2 producing Party, or a representative of such producing Party.

3 10. If any DESIGNATED MATERIALS or pleadings or other papers
4 containing DESIGNATED MATERIALS must be filed with the Court in connection
5 with any memorandum, pleadings, or other filings or proceedings herein, the papers
6 shall be filed pursuant to the procedure set forth in Local Rule 79-5.1.

7 11. At the appropriate time, the Court will determine the extent to which
8 the Order will control the use of protected information at trial. If, and once this
9 action proceeds to trial, any DESIGNATED MATERIALS introduced as evidence
10 at trial shall be presumed available to the public, unless there is a ruling by the Court
11 providing otherwise. DESIGNATED MATERIALS not introduced as evidence at
12 trial shall maintain such protections and designations after commencement of any
13 trial in this matter. Before the trial begins, the Parties will meet and confer in good
14 faith as part of the pre-trial conference statement process to put into place a
15 procedure for identification of and use of any materials the Parties want to maintain
16 as DESIGNATED MATERIALS at trial, which it shall submit to the Court for
17 approval. Absent any court order to the contrary, DESIGNATED MATERIALS
18 designated before trial shall maintain their status through the time of the pretrial
19 conference and meet and confer procedures described above. If the Parties cannot
20 reach agreement on a procedure, any Party may seek appropriate court orders
21 concerning the handling at trial of DESIGNATED MATERIALS.

22 12. The Parties shall (a) maintain all DESIGNATED MATERIALS of
23 another Party in a secure place that is reasonably inaccessible to anyone other than
24 those persons authorized under this Order to receive such information, (b) take
25 reasonable steps to ensure that such information is not disclosed to other persons,
26 and (c) take reasonable steps to secure electronically stored data.

27 **Disclosure of Designated Materials.**

28 13. If any document or information designated DESIGNATED

1 MATERIAL by the Parties hereunder is disclosed to any person not entitled to
 2 receive that document or information, such disclosure shall not result in forfeiture or
 3 limitation of the protections of this Order. Any such recipient:

4 a. Shall promptly be informed of all the provisions of this Order by
 5 the Party who discovers the improper disclosure and asked to return all copies of
 6 improperly received DESIGNATED MATERIAL;

7 b. Shall be identified immediately to all other Parties; and

8 c. Shall be requested to sign a Consent, attached as Exhibit A,
 9 which signed Consent shall be served on the opposing Parties.

10 **Non-Waiver Right to Designate.**

11 14. If, for any reason, a person produces any DESIGNATED
 12 MATERIALS pursuant to this litigation without marking the information as
 13 DESIGNATED MATERIALS, the producing person may subsequently request that
 14 the receiving party treat previously produced documents, information, or things as
 15 DESIGNATED MATERIALS by notifying the receiving party of the error and
 16 sending copies appropriately marked. Upon receipt of such notice, the receiving
 17 party will comply with the request. If the documents, information, or things have
 18 been disclosed beyond those permitted access in paragraph 7 above, the receiving
 19 party will use its best efforts to recall any such distributed copies.

20 **Case Termination.**

21 15. Within sixty (60) days after final termination of this Action, receiving
 22 counsel shall return or certify destruction of all DESIGNATED MATERIAL.
 23 Notwithstanding this, however, outside counsel of record for the Parties may retain a
 24 copy of all Court filings; correspondence; discovery requests and responses;
 25 deposition, hearing or trial transcripts; expert reports; attorney work product; and
 26 exhibits to any of the foregoing, provided that outside counsel of record continues to
 27 treat all DESIGNATED MATERIALS in the manner provided in this Order.

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1 **General Provisions.**

2 16. This Order shall not be construed as an agreement by the Parties to
3 produce or supply any document, or as a waiver by the Parties of the right to object
4 to the production of any document, or as a waiver of any claim of privilege with
5 regard to the production of any document.

6 17. Nothing herein shall preclude any Party from applying to the Court for
7 any modification of the terms provided herein, as it may deem appropriate under the
8 circumstances; provided, however, that prior to such application, the Parties
9 involved shall make a good faith effort to resolve the matter by agreement. Any
10 such request of the Court must be made pursuant to Local Rule 37.

11 18. This Court is responsible for the interpretation and enforcement of this
12 Order. All disputes concerning DESIGNATED MATERIALS produced under the
13 protection of this Order shall be resolved by this Court. The Parties shall remain
14 bound by this Order and the Court shall retain jurisdiction to enforce or modify this
15 Order even after the termination of this litigation.

16 19. Nothing contained in this Order shall preclude any party from using its
17 own protected information in any manner it sees fit, without prior consent of any
18 other party or the Court. Nothing herein shall operate as any admission by any of
19 the parties hereto that any particular materials contains or reflects trade secrets, or
20 other confidential or proprietary information.

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22 **IT IS SO ORDERED.**

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24 Dated: May 27, 2014



25 Hon. Jean P. Rosenbluth
26 Magistrate Judge U.S. District Court
27 Central District of California
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